118 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER07-384-000

ORDER ACCEPTING TARIFF AMENDMENTS

(Issued February 28, 2007)

1. On December 28, 2006, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed amendments to Schedules 10, 16, and 17 of its Open Access Transmission and Energy Markets Tariff (Tariff) to change the amortization period of the withdrawal obligations of entities that have withdrawn from Midwest ISO (December 28 Filing). As discussed below, we will accept the proposed tariff amendments.

Background

2. There are several schedules of the Tariff that provide for recovery, from transmission customers and market participants, of the costs associated with Midwest ISO's providing transmission service and operating its markets under the Tariff. Schedule 1 of the Tariff provides for charges to recover the costs associated with transmission scheduling, system control, and dispatch services. Schedule 16 of the Tariff provides for charges to recover the administrative costs of providing the financial transmission rights service associated with the Midwest ISO energy markets. Schedule 17 of the Tariff provides for charges to recover the costs of providing the other services associated with the Midwest ISO energy markets. Schedule 10 of the Tariff provides for charges to recover the costs of providing all other Tariff services, *i.e.*, those not provided under Schedules 1, 16, and 17, or, as discussed below, under Schedules 10-A, 10-B, 10-C, 16-A, and 17-A. Costs recovered through Schedule 10 charges include: Midwest ISO's pre-operating costs; costs associated with building and operating the Midwest ISO control center (including capital costs and operating expenses); and costs associated with administering the Midwest ISO Tariff. Schedules 10, 16 and 17 include per-unit charges applicable to transmission customers and/or market participants taking service under the Tariff, and withdrawal obligations (*i.e.*, exit fees) to be paid by transmission-owning members who withdraw from Midwest ISO.

3. The per-unit Schedule 10 charge applicable to transmission customers (the ISO Cost Recovery Adder) was capped at 15 cents/MWh during the initial transition period from Midwest ISO's commencement of operations, on February 1, 2002, until February 1, 2008. The portion of the Midwest ISO's monthly capital and operating costs in excess of the 15 cents/MWh cap is added to its pre-operating costs, and the sum of these costs is referred to as the Deferred Costs. Deferred Costs may be recovered during the transition period in months when capital and operating costs do not exceed the 15 cents/MWh cap. Starting February 1, 2008, when the cap expires, Deferred Costs will be amortized monthly over five years and recovered from transmission customers and market participants.

4. Pursuant to settlement agreements that permitted transmission owners Commonwealth Edison Company (ComEd) and later Louisville Gas & Electric Company and Kentucky Utilities Company (LG&E) to withdraw from Midwest ISO,[1] these companies paid their withdrawal obligations under Schedules 10, 16, and 17 in up-front lump sum payments. Because these companies continue to use Midwest ISO services, they pay the rates for these services under schedules established expressly for them: Schedule 10-A in the case of ComEd, and Schedules 10-C, 16-A, and 17-A in the case of LG&E.[2] The rates under these schedules are derived similarly to the per-unit charges applicable to all other transmission customers and/or market participants under Schedules 10, 16 and 17, except that they reflect a credit for the costs that ComEd and LG&E have pre-paid through their withdrawal obligations. ComEd and LG&E are eligible for such credits, up to a cumulative total amount equal to their withdrawal obligations, until December 15, 2013, and September 1, 2014, respectively.

Description of Filing

5. In the December 28 Filing, Midwest ISO filed proposed revisions to the formulas used to derive the per-unit charges in Schedules 10, 16 and 17 to reflect a change in the amortization of withdrawal obligations previously paid to Midwest ISO by ComEd and LG&E. Midwest ISO explains that it records the withdrawal obligations in a deferred revenue account. Midwest ISO states that, currently, the per-unit charges under Schedules 10, 16 and 17 reflect monthly amortization of the deferred revenue in amounts equal to the credits provided to ComEd and LG&E under Schedules 10-A, 10-C, 16-A, and 17-A each month for costs that they prepaid through their withdrawal obligations.

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[1] *See Illinois Power Co.*, 95 FERC ¶ 61,183, *reh'g denied*, 96 FERC ¶ 61,026 (2001); *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, *order on reh'g*, 116 FERC ¶ 61,020, *order on compliance*, 116 FERC ¶ 61,019 (2006).

[2] Schedule 10-B applies to a different company that was a founding member of Midwest ISO but never transferred control of its transmission system to Midwest ISO.

Midwest ISO explains that any unamortized balance of the deferred revenue at the expiration of Schedules 10-A, 10-C, 16-A, and 17-A (*i.e.*, December 15, 2013 with respect to Schedule 10-A, and September 1, 2014 with respect to Schedules 10-C, 16-A, and 17-A) will be fully applied to reduce costs recovered through the per-unit charges under Schedules 10, 16 and 17 in the months immediately after such expiration.

6. Midwest ISO states that it is currently difficult to determine what the unamortized balance of such deferred revenues will be at the expiration of Schedules 10-A, 10-C, 16-A, and 17-A because such calculations are based on the projected amount of service that ComEd and LG&E take during the term of such schedules. However, Midwest ISO believes that the unamortized balance is likely to exceed $30 million for ComEd, and $25 million for LG&E. Midwest ISO contends that these amounts are likely to exceed projected monthly costs by tens of millions of dollars, resulting in per-unit Schedule 10, 16 and 17 charges of zero for several months after the expiration of Schedules 10-A, 10-C, 16-A, and 17-A. To rectify this situation, Midwest ISO proposes to revise the formula for developing the per-unit Schedule 10, 16 and 17 charges to amortize the balance of the deferred revenue account associated with ComEd in equal installments over the remaining term of Schedule 10-A, and to amortize the balance of the deferred revenue account associated with LG&E in equal installments over the remaining term of Schedules 10-C, 16-A, and 16-B. Midwest ISO contends that such a mechanism will reflect the amortization of the withdrawal obligations paid by ComEd and LG&E, currently. Midwest ISO contends that the result would be a reduction in the per-unit Schedule 10, 16 and 17 charges applicable to the remaining transmission customers and market participants over the next seven to eight years as opposed to a dramatic decrease in those charges in the months following expiration of Schedules 10-A, 10-C, 16-A and 17-A.

7. Midwest ISO states that the proposed amendments will provide the remaining transmission customers and market participants with a current period rate for service that better recognizes payments received from ComEd and LG&E to cover their withdrawal obligations. Also, Midwest ISO argues that the amended rates are superior to the current rates due to the elimination of any potential for undue discrimination against remaining transmission customers and market participants in the existing rate formulas. Midwest ISO requests that the proposed tariff amendments become effective on March 1, 2007.

Notice and Responsive Filings

8. Notice of Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 1504 (2007), with interventions and protests due on or before January 18, 2007. Ameren Services Company, Consumers Energy Company, and WPS Resources Corporation and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula

Power Company, WPS Energy Services, Inc. and WPS Power Development, LLC filed motions to intervene raising no substantive issues. The Midwest ISO Transmission Owners (Transmission Owners) filed a motion to intervene and comments.

Transmission Owners' Comments

9. Transmission Owners state that Midwest ISO's proposed tariff revisions are unclear as to how the alleged reduction in costs due to the proposed monthly amortization of the withdrawal obligations relates to the application of the 15 cents/MWh cap during the transition period. Transmission Owners request clarification that "Withdrawal Obligations do not impact the determination of the 'monthly capital and operating costs' subject to the 15 cents/MWh cap," and that any reductions passed through as a result of the instant proposal should not offset the costs to be subject to the 15 cents/MWh cap.

10. In support of their requested clarifications, Transmission Owners argue that the 15 cents/MWh cap was intended to limit the pass-through of ordinary costs associated with operating Midwest ISO,[3] whereas the costs associated with withdrawal obligations are extraordinary costs unrelated to day-to-day operations. Transmission Owners contend that costs associated with withdrawal obligations should not be a factor in applying the 15 cents/MWh cap, and that application of the 15 cents/MWh cap should not affect the provision of credits associated with withdrawal obligations.

11. Transmission Owners ask the Commission to require Midwest ISO to amend its proposal to clarify that the application of credits associated with withdrawal obligations and payments under Schedules 10-A, 10-B, and 10-C will not affect the application of the 15 cents/MWh cap.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[3] Transmission Owners cite the transmittal letter to Midwest ISO's 1998 filing of its proposed open access transmission tariff, which states that "Schedule 10 of the Tariff provides for an adder to the rates to recover the ISO's operating costs (not otherwise recovered). . . . Owners that seek to withdraw from the ISO before they pay their share of the deferred costs will continue to be obligated to pay for their share of the deferred costs." December 28, 2006 Filing by Midwest ISO, in Docket No. ER98-1438-000, at 16 (footnotes omitted)."

Substantive Matters

13. We will accept Midwest ISO's proposed revisions without modification. We agree with Midwest ISO that its proposal will result in rates, to the remaining transmission customers and market participants, that better reflect the contributions to certain costs that ComEd and LG&E made through payment of their withdrawal obligations at the same time such costs are reflected in the ISO Cost Recovery Adder applicable to other customers.

14. We disagree with Transmission Owners' assertion that Midwest ISO's proposal is unclear as to the application of the 15 cents/MWh cap. Under Midwest ISO's proposal, the 15 cents/MWh cap applies to the ISO Cost Recovery Adder.[4] The ISO Cost Recovery Adder is derived by dividing monthly budgeted costs to be recovered through the ISO Cost Recovery Adder by estimated energy transfers for transmission service (the basis for the billing determinant for the ISO Cost Recover Adder). The calculations set forth in the proposed amendments clearly indicate that the credit for projected costs to be recovered under Schedules 10-A, 10-B and 10-C, and the monthly amortization of the withdrawal obligations, are to be subtracted from monthly budgeted costs to be recovered through the ISO Cost Recovery Adder before derivation of the per-unit charge to which the 15 cents/MWh cap applies.[5]

15. Moreover, applying ComEd's and LG&E's contributions to such costs to reduce the per-unit ISO Cost Recovery Adder rate, before the 15 cents/MWh cap is applied, is consistent with the existing tariff provisions for application of the 15 cents/MWh cap. Had ComEd and LG&E not withdrawn from Midwest ISO, the energy transfers associated with their native load would have been included in the rate divisor in deriving the ISO Cost Recovery Adder, reducing the per-unit rate before applying the 15 cents/MWh cap. Since these companies' withdrawals, their energy transfers associated with transmission service subject to Schedules 10-A and 10-C are included in the divisor in deriving the ISO Cost Recovery Adder, reducing the per-unit rate, before applying the 15 cents/MWh cap. Thus, the ISO Cost Recovery Adder reflects cost contributions under Schedules 10-A and 10-C and amortization of the withdrawal obligations in an amount equal to the credits for pre-paid costs under Schedules 10-A and 10-C. Midwest ISO has found that this amortization schedule fails to adequately reflect ComEd's and LG&E's contributions to costs recovered in current period rates and

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[4] Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Proposed Third Revised Sheet No. 939 and Substitute Second Revised Sheet No. 945.

[5] Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Proposed Original Sheet No. 941A and Proposed Third Revised Sheet No. 943 through Proposed Original Sheet No. 944-A, and Substitute Second Revised Sheet No. 945.

proposes to increase the monthly amortization of the withdrawal obligation. To achieve this, Midwest ISO will remove the energy transfers associated with transmission service subject to Schedules 10-A and 10-C from the rate divisor and apply a credit to the budgeted costs to be recovered through the ISO Cost Recovery Adder in an amount equal to cost contributions under Schedules 10-A and 10-C and the increased monthly amortization of the withdrawal obligations to better reflect ComEd's and LG&E's contributions to costs currently reflected in the rate. We agree with Midwest ISO's assessment and, as explained above, find no reason why changing the schedule for amortizing the withdrawal obligations should change the manner in which the 15 cents/MWh cap is applied. Accordingly, we will not direct Midwest ISO to amend its proposal for further clarification as requested by Transmission Owners.

16. We also disagree with Transmission Owners' assertion that costs associated with withdrawal obligations are extraordinary costs and are unrelated to day-to-day operations. Costs recovered through the ISO Cost Recovery Adder include Midwest ISO's pre-operating costs, costs associated with building and operating the Midwest ISO control center, including capital costs and operating expenses, and costs associated with administering the Midwest ISO Tariff.[6] These are the same costs toward which ComEd and LG&E contribute under Schedules 10-A and 10-C and through their withdrawal obligations. Had ComEd and LG&E not withdrawn from Midwest ISO, they would have paid the ISO Cost Recovery Adder for service to their native load. After withdrawal, ComEd's and LG&E's native load is no longer in the Midwest ISO footprint, and thus the ISO Cost Recovery Adder no longer applies to that load. However, through their withdrawal obligations, ComEd and LG&E each made a lump-sum payment reflecting the portion of the Deferred Costs that they would have paid through the ISO Cost Recovery Adder had they not withdrawn. To the extent that they or their affiliates take transmission service on the Midwest ISO system after withdrawal, they pay the rates under Schedules 10-A and 10-C that reflect a credit for Deferred Costs that they prepaid through the withdrawal obligations. Thus, costs recovered through Schedule 10-A and 10-C and through the withdrawal obligations are not extraordinary costs as Transmission Owners maintain. They represent the same costs toward which the remaining customers contribute through the ISO Cost Recovery Adder. They are just recovered from ComEd and LG&E under a different billing mechanism.

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[6] Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 937.

The Commission orders:

Midwest ISO's proposed amendments to Tariff Schedules 10, 16, and 17 are hereby accepted for filing, to become effective March 1, 2007, as requested.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.